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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/696,337      | 10/28/2003  | Wade Spicer          | 03140               | 8092             |

7590 02/08/2005

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EXAMINER

LE, HUYEN D

ART UNIT PAPER NUMBER

3751

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/696,337

Applicant(s)

SPICER, WADE

Examiner

Huyen Le

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/9/04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 14 recites the limitation "said rail members" in lines 11-12. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 8, 9 and 12 -14 are rejected under 35 U.S.C. 102(b) as being anticipated by Shaanan et al (6,421,846)

The Shaanan et al reference discloses a base structure for an above ground swimming pool comprising an arcuate bottom track member 104 (Fig. 8), the bottom track member 104 having a bottom surface, a top surface 103a, an inner wall portion, an outer wall portion and a pair of end portions, the inner wall portion having a groove 103 formed therein, the groove 103 having a groove bottom which is located in a plane which is substantially elevated from the bottom surface, the groove 103 adapted to

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receive a bottom end of a side wall panel 18 of a swimming pool in a manner whereby the bottom end of the side wall panel 18 will be substantially elevated above a supporting surface upon which the bottom surface of the track member 104 is placed.

Regarding claim 2, the groove 103 is provided at a location approximately halfway between the bottom surface and the top surface of the track member 104 (Fig. 8).

Regarding claim 8, the base structure comprises a plurality of spaced apart base member 92.

Regarding claim 9, the base member 92 has a groove formed therein (between members 94 and 102 in Fig. 9), the groove having a bottom which is located in a plane which is substantially elevated from a supporting surface upon which the base members 92 are supported.

Regarding claim 12, the base members support vertical column 14 of the swimming pool structure.

Regarding claim 13, the bottom track member 104 and the base members 92 removably interlock with one another.

Regarding claim 14, the pool has a depth greater than the height of the side panels 18.

6. Claims 1, 8, 9, 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Gershman (3,280,408).

The Shaanan et al reference discloses a base structure for an above ground swimming pool comprising an arcuate bottom track member 14, the bottom track

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member 14 having a bottom surface 20, a top surface 22, an inner wall portion 16 , an outer wall portion 18 and a pair of end portions, the inner wall portion having a groove 24 formed therein, the groove 24 having a groove bottom which is located in a plane which is substantially elevated from the bottom surface, the groove 24 adapted to receive a bottom end of a side wall panel 8 of a swimming pool in a manner whereby the bottom end of the side wall panel 8 will be substantially elevated above a supporting surface upon which the bottom surface of the track member 104 is placed.

Regarding claim 8, the base structure comprises a plurality of spaced apart base member 32.

Regarding claim 9, the base member 32 has a groove formed therein, the groove having a bottom which is located in a plane which is substantially elevated from a supporting surface upon which the base members 32 are supported.

Regarding claim 12, the base members support vertical column 48 of the swimming pool structure.

Regarding claim 13, the bottom track member 14 and the base members 32 removably interlock with one another.

Regarding claim 14, the pool has a depth greater than the height of the side panels 8.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3-6, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaanan et al (6,421,846).

The Shaanan et al reference discloses a base structure for an above ground swimming pool as described above.

Although the Shaanan et al reference does not specifically disclose the dimension of the track member, the distance between the bottom of the groove and the bottom surface of the track member and the depth of the groove, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select certain dimensions such as height, depth or length to best fit the base structure for a swimming in order to optimize its performance, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ (CCPA 1980).

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shaanan et al (6,421,846).

The Shaanan et al reference discloses a base structure for an above ground swimming pool comprising a bottom track member 104 having an inner surface, the inner surface having a lower portion located below the groove 103 and an upper portion located above the groove where in the upper portion is generally vertical and the lower portion slopes outwardly.

Although the Shaanan et al reference does not specifically disclose what sloping angle the lower portion is, it would have been obvious to one having ordinary

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skill in the art at the time the invention was made to select a certain dimension for the sloping angle of the lower portion of the inner surface of the bottom track member to best fit the base structure for a swimming in order to optimize its performance, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ (CCPA 1980).

10. Claims 3-6, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gershman (3,280,408)

The Gershman reference discloses a base structure for an above ground swimming pool as described above.

Although the Gershman reference does not specifically discloses the dimension of the track member, the distance between the bottom of the groove and the bottom surface of the track member and the depth of the groove, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select certain dimensions such as height, depth or length to best fit the base structure for a swimming in order to optimize its performance, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ (CCPA 1980).

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Wall and Diamond et al '917 and 621 discloses base structure for pools comprising bottom track members having grooves.

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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890.

The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Huyen Le  
Examiner  
Art Unit 3751

HL  
February 7, 2005